No. 93-32

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1992

SARAH N. PHELPS,
Petitioner,

v.

YALE SECURITY, INC.,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Robert L. Thompson
Counsel of Record
Elarbee, Thompson & Trapnell
800 Peachtree-Cain Tower
229 Peachtree Street, N.E.
Atlanta, Georgia 30303
(404) 659-6700

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The Petition for Writ of Certiorari does not present any "special and important" reasons for certiorari review as those terms are used in Supreme Court Rule 10; more specifically, the decision rendered by the United States Court of Appeals for the Sixth Circuit does not conflict on any point of federal law with the decision of any other United States court of appeals, and the Petition should therefore be denied.

Statements of the case are fully set forth in the opinions of the Sixth Circuit and the district court, which are attached to the Petition.

The material facts as established in the record made during three days of trial showed that Petitioner was discharged in the course of a reduction of administrative positions when her supervisor identified her stenographer position as one which her department could do without. Although Petitioner placed volumes of testimony in the record in support of her contention that her age actually motivated the discharge, both

the district court and the Sixth Circuit agreed that the relevant evidence in the record could not sustain Petitioner's ultimate burden of showing age was determinative in the decision at issue. Accordingly, a judgment as a matter of law in favor of Respondent under Federal Rule of Civil Procedure 50(b) was proper.

The crux of Petitioner's arguments for Certiorari review by this Court is that the Sixth Circuit's formulation of the prima facie case in Phelps conflicts with three other Sixth Circuit panel opinions (see Petition at pp. 18 and 24) and six opinions from five other United States courts of appeal (see Petition at 18, 19, 21, 26 and 27). The supposed "conflicts" cited by Petitioner are **illusory**, as all the courts mentioned by Petitioner were applying the same burden shifting analysis recently explicated in St. Mary's Honor Center v. Hicks, No. 92-602 (June 25, 1993). Put simply, the differences between the opinions cited by Petitioner and the result in the instant case are not the result of

any conflict in the interpretation of federal jurisprudence; rather any conflict can be entirely accounted for on the basis of variations in the facts underlying each opinion. No clear conflict which can be effectively resolved by this Court therefore exists and certiorari review is inappropriate. 13 Moore's Federal Practice, ¶ 810.21 (2d. ed.).

In support of the preceding, respondent notes that both the opinions of the Sixth Circuit and district court in Phelps assumed that the various pieces of allegedly "unconsidered" evidence set forth in the Petition at pages 4-13 were sufficient to establish a prima facie case. See Petition at A-5 and A-17. The courts below were therefore not concerned with the legal issue said by Petitioner to require review by this Court; i.e., the quantum of evidence required to support a prima facie case. Rather, they were addressing whether the record evidence as a whole raised an issue of age discrimination.

Respondent suggests that Petitioner is confusing the term "prima facie case" as it applies to discrimination cases with that term as it is used in common law tort cases. While a plaintiff establishing a prima facie tort case is entitled to have his or her case decided by a jury, every circuit, including the Sixth, recognizes that a prima facie case of age discrimination entitles the plaintiff only to have the defendant explain the reasons for its actions. As Respondent did proffer explanations for its actions during the course of trial, the issue of whether Petitioner made out a prima facie case became moot for purposes of Respondent's Rule 50(b) motion, and the only remaining issue was whether Petitioner could demonstrate illegitimate motives for her termination. In making a determination on this latter issue, the Sixth Circuit applied the same federal rules on whether evidence is logically and materially related to an issue as are applied in every other United States court of

appeals. The fact that Petitioner disagrees with end result of the Sixth Circuit's analysis, as opposed to the legal norms being applied, is hardly grounds for Supreme Court review.[1]

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

This 30th Day of June, 1993.

Robert L. Thompson

ELARBEE, THOMPSON & TRAPNELL
800 Peachtree-Cain Tower
229 Peachtree Street, N.E.
Atlanta, GA 30303
(404) 659-6700

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[1] This consideration applies equally to the other supposed conflicts pointed to by the Petitioner: the significance of comment evidence (Petition at pp. 28-32) and references to untimely claims of discrimination (Petition at pp. 32-34). In both cases, the Sixth Circuit was not applying different legal doctrines from those applied in other United States courts of appeal. Rather, the underlying facts of the instant case are such that the Sixth Circuit properly came to a conclusion different from other circuit opinions applying the same rules to disparate records. No basis for Supreme Court review is supplied by such a context.